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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,156	09/18/2006	Helmut Konopa	2003P00855W0US	9474
46726 7590 06/11/2010 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562				
EXAMINER				
ZEC, FILIP				
ART UNIT		PAPER NUMBER		
3744				
NOTIFICATION DATE		DELIVERY MODE		
06/11/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/560,156

Applicant(s)

KONOPA, HELMUT

Examiner

Filip Zec

Art Unit

3744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Cheryl J. Tyler/
Supervisory Patent Examiner, Art Unit 3744

/Filip Zec/
Examiner, Art Unit 3744

Continuation of 11, does NOT place the application in condition for allowance because:

In reference to the applicant's arguments regarding the rejection of claim 12 under 102(b) over Whipple, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Also, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). In this case, the apparatus of Whipple includes all positively recited structural members of claim 12. Said apparatus of Whipple is further capable of performing the functional recitation of "... which makes an average circulation power of a fan variable during an activation phase of a evaporator based on at least one air conditioning parameter." The Applicant's apparatus claim fails to structurally define over the apparatus of Whipple. Because claim 12 fails to further limit the instant invention in terms of structure, but rather only recite further functional limitations, the teachings of Whipple, which have been shown to meet all the structural limitations as previously described in this action, are therefore deemed fully capable of performing all the functional requirements as recited in the instant claim 12.

In reference to the applicant's arguments regarding the rejection of claims 14-16 and 19 under 103(a) over Whipple in view of Shima, Shima clearly states that in order "to provide a low temperature storage cabinet the operation of electric fan in the cabinet is controlled based on an air conditioner parameter (difference in pressure between upper and lower compartments of the cabinet, col 1, line 40) to reduce consumption of the electric power without causing any problem discussed above" (col 1, lines 37-44), thus the motivation for combining Whipple and Shima is clearly present. Additionally, Shima is used solely to provide the teachings of an intermittently operable evaporator fan, thus whether the compressor is simultaneously working with the fan is not pertinent to the claimed matter which was rejected. The saving switch (25, FIG. 2), which triggers the circuit (21, FIG. 2) and the timer (21a, FIG. 2), enables the fan's intermittence for efficiency purpose (col 7, lines 1-4 and col 1, lines 37-44).

In response to applicant's argument that Kelly is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Whipple and Kelly teach a component of a climate control system, be it an energy-efficient refrigerator control system, as described in Whipple or a fog prevention system for a vehicle. Since the applicant is claiming a no-frost refrigeration device, it is safe to say that both the teachings of Whipple and Kelly are in the same field of endeavor as the Applicant's claimed invention. Also, the applicant is arguing that the process of defogging, as taught by Kelly, is in stark contrast to what is claimed, however, as is well known, defogging is essentially a process of dehumidifying the surface of the windglass. In this case, Kelly teaches that by increasing the blower speed one is capable of decreasing the humidity (BL offset - blower motor speed, combined with the outside air AI offset; col 4, lines 18-24, 52-56 and 65-67).

In response to applicant's argument that Kelly is not capable of solving the problems as claimed, pages 13-16, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). It is well known in the art, for instance, in the freeze drying branch, that decreasing the humidity by lowering the temperature enables prevention of foodstuffs decay, and thus, the rejections over Whipple in view of Kelly remain.

In response to applicant's argument that Pesko is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Pesko teaches a method for managing the energy usage of a controlled space, based on occupancy, which is analogous to an air conditioned vehicle cabin or a refrigerator or any similar air temperature controlled system. Additionally, Pesko clearly teaches that it has been determined that more moisture is removed from the air when the fan is operated at a low speed than when it is operated at a high speed. Thus, in accordance with the present invention the speeds of the individual fans are optimized in order to optimize the air flows over the various coils of the independently controlled spaces 135. (col 12, lines 58-60).

All rejections remain as previously stated.